

COUNTY OF SUFFOLK



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DEPARTMENT OF LAW

April 27, 2017

Hon. Arlene R. Lindsay, U.S.M.J.
United States District Court, Eastern District of New York
Long Island Courthouse
100 Federal Plaza
Central Islip, New York 11722

Re: Simmons v. County of Suffolk et al.
CV14-CV-3884 (AMD) (ARL)

Dear Judge Lindsay:

This office represents the County of Suffolk and the Suffolk County police officers who are defendants in this civil rights action pursuant to 42 U.S.C. §1983. We submit this letter jointly with counsel for plaintiff, Eric Hecker, Esq., and Brett Klein, Esq., to request an extension of the discovery schedule to permit the taking of the last few depositions.

Since the parties' last contact with the Court, defendants have deposed the plaintiff. Plaintiff has conducted the depositions of non-party Suffolk County Deputy Medical Examiner Maura DeJoseph, non-party Suffolk County police detectives Michael Milau, and Brendan O'Hara, defendants Rule 30(b)(6) witnesses Ed Bracht and Ray Sitler and defendant Steven Turner. These depositions were in addition to the 14 depositions of defense witnesses previously conducted. The parties have also served reports of their respective forensic pathologist experts.

Presently, four depositions remain outstanding. The depositions of the experts remain to be conducted. The parties are available to take the deposition of plaintiff's expert, Dr. Michael Baden, on May 12, 2017 and defendants' expert, Dr. Charles Wetli, on May 16, 2017. The parties also need to finish the depositions of a non-party witness, former Suffolk County police detective Edward Fandrey, who led the investigation into decedent's death, and Raymond Sitler, Defendants' 30(b)(6) witness regarding police training. Those two depositions began but had to be continued because certain relevant documents inadvertently had not been produced. The parties are available to complete Mr. Sitler's continued deposition on May 3, 2017 and Det. Fandrey's continued deposition on May 15, 2017.

The parties believe that once the experts are deposed and Mr. Sitler's and Det. Fandrey's depositions are completed, no further discovery will be conducted.

It is the position of plaintiff's counsel, Brett Klein and Eric Hecker, that the inability to complete the four remaining depositions prior to the current discovery deadline was not attributable to them (and refers the Court to their March 6, 2017 letter to the Court). They note that they made their expert, Dr. Baden, available to be deposed during the last two weeks of April and sought to depose our expert, Dr. Wetli, during that period as well. However, I was unavailable to proceed with the depositions because I was scheduled to be on trial before Judge Feuerstein in the case of *Karen Boyle, plaintiff, v. County of Suffolk, et al.*, CV15-3510 (SJF)(GRB), a matter which was settled on the eve of trial on April 21, 2017. Plaintiffs are willing to complete the four remaining depositions on the dates identified above if the Court extends the discovery time to accommodate them, and in the event the Court is not inclined to extend the deadline, Plaintiffs wish to be heard further.

Both sides agree that if the Court is willing to extend the deadline as set forth above, no additional judicial intervention will be necessary at this time.
We thank the Court in advance for its anticipated consideration of this request.

Respectfully yours,

Dennis M. Brown
Suffolk County Attorney

/s/ Arlene S. Zwilling
By: Arlene S. Zwilling
Assistant County Attorney